vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

**NOTICE OF MOTION NO.1064 OF 2005**
IN
SUIT NO.1019 OF 2005

Tarabai H. Todankar ... Plaintiff
V/s.
Rajani B. Mudaliyar ... Defendant

Mr.P.G. Karande for Plaintiff
None for Defendant

CORAM: **SMT.NISHITA MHATRE, J.**
DATED: **JULY 6, 2006**

**P.C.:**

. The Defendant though served, is not present. The Plaintiff contends that she is the tenant of the suit premises. She permitted the defendant to conduct the tailoring business known as Sainath Tailors, Shop No.A/26, Shivaji Park House, Bai Padmabai Thakkar Road, Mahim, Mumbai-16. Although there is no document on record to indicate that there was any agreement between the plaintiff and the Defendant's husband, there is no affidavit in reply to the Motion contesting the averments of the Plaintiff. The plaintiff points out that licence granted to her under the Bombay Shops and Establishments Act annexed at Exhibit C1 to the plaint. This licence indicates that the plaintiff is the owner of the business and that the defendant was conducting the tailoring business. At Exhibit C2, the plaintiff has annexed a receipt showing that the licence fee has been paid wherein the defendant has been shown as the conductor of the tailoring business.

2. The agreement was executed between the plaintiff

and the defendant's husband who has expired on 10.5.1994. According to the Plaintiff, the defendant is neither paying the conducting charges agreed @ Rs.2,500/- per month nor is she vacating the premises after the death of her husband. The Plaintiff has already been granted ad-interim relief in terms of prayer (C). An undertaking of the defendant is on record to the effect that she will not sell, transfer, alienate or create any third party title or interest in the suit property till the Motion is heard.

3. Mr.Karande, appearing for the plaintiff, urges that the Motion be made absolute and prayer clause (b) be granted by appointing the plaintiff as an agent of the Court Receiver without any security and royalty.

4. Since there is absolutely no defence nor reply by the Defendant, Motion is made absolute in terms of prayer clauses (A) and (C). As regards prayer clause (B), the Court Receiver is appointed. The Defendant may act as an agent of the Court Receiver in respect of the business namely, Sainath Tailors, Shop No.A/26, Shivaji Park House, Bai Padmabai Thakkar Road, Mahim, Mumbai-16 on entering into an agency agreement on usual terms and conditions within six weeks from today.

5. In the event the Defendant fails to execute the agency agreement within the stipulated time, the Plaintiff is at liberty to apply to the Court for being

appointed as an agent of the Court Receiver without security and royalty.